

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96816

June 23, 2006

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF: 06HD-130

HAWAII

Consent to the Merger between Sunrise Capital, Inc. and Kona Bay Marine Resources, Inc. as it relates to: (1) General Lease Nos. S-4946 and S-5367, and Revocable Permit Nos. S-7252 and S-7256, issued by the Board of Land and Natural Resources to Sunrise Capital, Inc.; and (2) Sublease K-20 issued by the Natural Energy Laboratory of Hawaii Authority to Kona Bay Marine Resources, Inc.

APPLICANT:

Sunrise Capital, Inc. ("Sunrise"), a Hawaii corporation, whose mailing address for purposes of this request is c/o Steven Gelber, Esq. and Richard Ingersoll, Esq., Suite 1400, Fort Street Tower, Topa Financial Center, 745 Fort Street, Honolulu, Hawaii 96813.

Kona Bay Marine Resources, Inc. ("KBMR"), a domestic profit corporation, whose mailing address for purposes of this request is c/o William Yuen, Esq., ASB Tower, Suite 2700, 1001 Bishop Street, Honolulu, Hawaii 96813.

DCCA VERIFICATION:

Sunrise:

Place of business registration confirmed:	YES
Registered business name confirmed:	YES
Good standing confirmed:	YES

KBMR:

Place of business registration confirmed:	YES
Registered business name confirmed:	YES
Good standing confirmed:	YES

LEGAL REFERENCE:

Section 171-36(a) (5), Hawaii Revised Statutes, as amended, and paragraph thirteen (13) in the General Leases issued by the Board of Land and Natural Resources ("BLNR"), and paragraph twenty-eight (28) in the Sublease issued by the Natural Energy Laboratory of Hawaii Authority ("NELHA")

LOCATION AND AREA:

## BLNR's Leases and Permits to Sunrise:

- GL No. S-4946: Lots 53 and 54A, Hanapepe Town Lots, 1st Series, Hanapepe, Waimea, Kauai, TMK: (4) 1-9-10: 37 consisting of 16,855 square feet, as shown on the attached map labeled Exhibit A.
- GL No. S-5367: Kekaha, Waimea, Kauai, TMK: (4) 1-2-02: 22 consisting of 5.195 acres, as shown on the attached map labeled Exhibit B.
- RP No. S-7252: Portion of the Kokee and Kekaha Ditches, portion of the Government Land of Waimea including Hawaiian Home Lands, Waimea, Kauai, TMK: (4) 1-2-02: Portion 1 and 23, as shown on the attached map labeled Exhibit C.
- RP No. S-7256: Lots 50, 54B, 58B and 82, Hanapepe Town lots, 1st Series, Hanapepe, Waimea, Kauai, TMK: (4) 1-9-10: 34, 35 and 38, and (4) 1-9-11:7 consisting of 0.825 acres, as shown on the attached map labeled Exhibit D.

## NELHA's Sublease to KBMR:

- Sublease K-20: Portions of the Government Lands of Hamanamana, Kalaoa 1st – 4th and Ooma 1st, situated at Kailua-Kona, Hawaii, TMK: (3) 7-3-43: Portion 42, consisting of 6.5 acres, as shown on the attached map labeled Exhibit E.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act.

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: Yes, applies to RP No. S-7252 only.

CHARACTER OF USE:

## Sunrise:

- GL No. S-4946: Wholesale/retail fish market operation.
- GL No. S-5367: Aquaculture purposes.
- RP No. S-7252: The operation and maintenance of a portion of an existing water transportation system and the taking of water from the Kokee and Kekaha Ditches.
- RP No. S-7256: Parking, storage and/or access purposes.

## KBMR:

Sublease K-20: Commercial aquaculture purposes for the culture of oysters, clams and shrimp.

TERMS OF THE VARIOUS LAND USE AGREEMENTS:

## Sunrise:

GL No. S-4946: Fifteen (15) years commencing on January 18, 1985 and expiring on January 17, 2000. Extended twenty-four (24) years commencing on January 18, 2000 and expiring on January 17, 2024. Next rental reopening is scheduled for January 18, 2007.

GL No. S-5367: Thirty-five (35) years, commencing on August 1, 1994 and expiring on July 31, 2029. The next rental reopening is scheduled for August 1, 2014.

RP No. S-7252: Month to month basis for a period of one-year from the commencement date of April 23, 2003 and may be extended by action of the BLNR for additional one-year periods.

RP No. S-7256: Month to month basis for a period of one-year from the commencement date of February 1, 2001 and may be extended by action of the BLNR for additional one-year periods.

## KBMR:

Sublease K-20: Twenty years (20) commencing on April 1, 2005 and expiring on March 31, 2025. Next rental reopening is scheduled for April 1, 2010.

ANNUAL RENTAL:

## Sunrise:

GL No. S-4946: Four thousand four hundred dollars (\$4,400) or seven percent (7%) of the Lessee's gross sales, whichever is the greater.

GL No. S-5367: One thousand one hundred dollars (\$1,100) or three percent (3%) of the Lessee's gross sales, whichever is the greater.

RP No. S-7252: One hundred fifty-six dollars (\$156).

RP No. S-7256: Five thousand seven hundred dollars (\$5,700).

## KBMR:

Sublease K-20: Thirty thousand dollars (\$30,000) or two percent (2%) of the Sublessee's gross sales in any calendar year, whichever is the greater.

BACKGROUND:

Sunrise acquired GL Nos. S-4946 and S-5367 and RP Nos. S-7252 and S-7256 pursuant to an Asset Purchase Agreement between Sunrise and the several Ceatech companies (Ceatech) party to a bankruptcy proceeding in the United States Bankruptcy Court for the District of Hawaii.

Under the Asset Purchase Agreement, Sunrise also acquired the interest in other unexpired leases and permits issued to Ceatech by the State of Hawaii Board of Agriculture and the Agribusiness Development Corporation.

The Bankruptcy Court approved the Asset Purchase Agreement and subsequently at its July 22, 2005 meeting, under agenda item D-2, the BLNR consented to the assignment of the subject leases and permits from Ceatech to Sunrise.

General Lease Nos. S-4946 and S-5367 provides the BLNR with "...the right to review and approve the consideration paid by the Assignee and may condition its consent to the assignment of the lease on payment by the Lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the straight-line depreciated cost of improvements and trade fixtures being transferred to the Assignee... If the Lessee is a partnership, joint venture or corporation, the sale or transfer of 20% or more of ownership interest or stocks by dissolution, merger or any other means shall be deemed an assignment for purposes of this paragraph and subject to the right of the Lessor to impose the foregoing premium."

This proposed merger will result in the transfer of 50% of the ownership interest in Sunrise to the shareholders of KBMR. Therefore, this proposed merger requires the consent of BLNR, and also triggers the assignment premium provision (evaluation of whether a premium is due) contained in both leases.

NELHA is a State agency administratively attached to the Department of Business, Economic Development & Tourism and operates an 870-acre ocean science and technology park under a master lease (General Lease No. S-5619) from the BLNR, under which Sublease K-20 was issued.

KBMR has been a tenant at NELHA since 1996 (on a shorter term facilities use agreement) developing proprietary techniques to optimize the commercial production of specific pathogen-free (SPF) and specific pathogen resistant (SPR) shrimp brood stock and disease-free bivalve seed. The company markets high quality SPF and SPR shrimp brood stock to markets in Asia, the US Mainland and Hawaii and certified disease-free clam seed in the US Mainland, Europe and Mexico. Following a facility expansion that increased overall production by 50%, the company received the 2004 Governor's Exporter of the Year Award. In 2005, ground clearing was begun for a second expansion phase to further increase the company's production capacity.

NELHA issued Sublease K-20 to KBMR for a twenty-year (20) term commencing April 1, 2005, to operate a land-based aquaculture facility at the NELHA site in Kailua-Kona on the island of Hawaii.

Under the assignments paragraph twenty-eight (28) contained in Sublease K-20, the consents of both the NELHA Board and the BLNR are required if 50% of the ownership interest in KBMR

is transferred. Because KBMR will be folded into the surviving entity, Sunrise, and KBMR will cease to exist, this merger should be deemed to result in a transfer of 100% of KBMR. Therefore, KBMR is required to obtain the consents of both the NELHA Board and BLNR.

**REASON FOR ASSIGNMENT:** KBMR is in the process of merging with Sunrise. The two companies recently reached an agreement in principle to a merger of equals in which Sunrise would be the surviving corporation. Upon consummation of the merger KBMR shareholders are to receive preferred shares or common shares comprising 50% of the equity in Sunrise. The business plan will integrate the aquaculture operations of both companies to produce shrimp and bivalves at both the Kona and Kauai facilities. The merger is planned to close on or before June 30, 2006.

KBMR is in the process of curing a late percentage rent payment but is otherwise in compliance with the sublease terms and conditions.

Neither KBMR nor Sunrise has had a lease, permit, easement or other disposition of State land terminated within the last five years due to non-compliance with such terms and conditions.

#### ANALYSIS AND RECOMMENDED PREMIUM:

The Assignment of Lease Policy is designed to discourage tenants from speculating or profiting on the value lands under of State leases. In this case, there is no cash consideration. After the merger, the surviving entity will be Sunrise. The shareholders of KBMR will receive 50% of the ownership interest in Sunrise (in a combination of common and preferred stock).

Staff recognizes that cash is not the only form of consideration. Consideration may be given in the form of stock or ownership interest in a company. This case involves a 50-50 merger in that the shareholders of Sunrise and KBMR will respectively own 50% of Sunrise after the merger (consisting of the combined pre-merger net worth of both Sunrise and KBMR).

In analyzing whether a premium is due as a result of this merger, staff evaluated the shareholders' net worth in their respective entities, both pre-merger and post merger.

Staff reviewed the financial statements for Sunrise and KBMR. Based on staffs' evaluation, it appears that Sunrise's pre-merger net worth is at about \$8.0 million<sup>1</sup>, whereas KBMR's pre-merger net worth is roughly \$1.4 million. After the merger, the current shareholders of Sunrise will see a decrease in their share of Sunrise's net worth go from \$8.0 million down to \$4.7 million.<sup>2</sup> On the other hand, the shareholders of KBMR will see an increase in their share of the net worth going from \$1.4 million to \$4.7 million. Thus, it appears that the current shareholders of Sunrise will receive less value as a result of this merger than the shareholders of KBMR. Based on the foregoing analysis, staff does not believe any premium is due from Sunrise. With

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<sup>1</sup> Staff valued Sunrise's net worth at \$8.0 million based in part on 2004 financials indicating that Ceatech's depreciated cost of leasehold improvements at about \$6.5 million. Ceatech's mortgage that had secured the leasehold improvements was released during the Bankruptcy proceeding. The General Leases were assigned to Sunrise free of any liens and encumbrances.

<sup>2</sup> The combined net worth of Sunrise at \$8.0 million and KBMR at \$1.4 million equals \$9.4 million; \$9.4 million divided by 2 equals \$4.7 million. Thus, the Sunrise group of shareholders and the KBMR group of shareholders will each own a 50% interest in the surviving entity, Sunrise, with each group having a post merger net worth of \$4.7 million.

respect to KBMR, NELHA issued the Sublease to KBMR and collects the rent. Therefore, if a premium were due from KBMR as a result of this merger, NELHA would be entitled to receive the premium, and not BLNR. Accordingly, no premium is payable to BLNR by any party as a result of this merger.

RECOMMENDATION:

That the Board consent to the merger between Kona Bay Marine Resources, Inc. and Sunrise Capital, Inc. with the latter being the surviving entity, subject to the following:

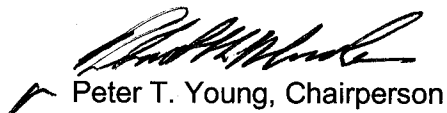
- A. The standard terms and conditions of the most current consent to assignment form, as may be modified to reflect the Land Board's consent to this merger.
- B. Review and approval by the Department of the Attorney General.
- C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



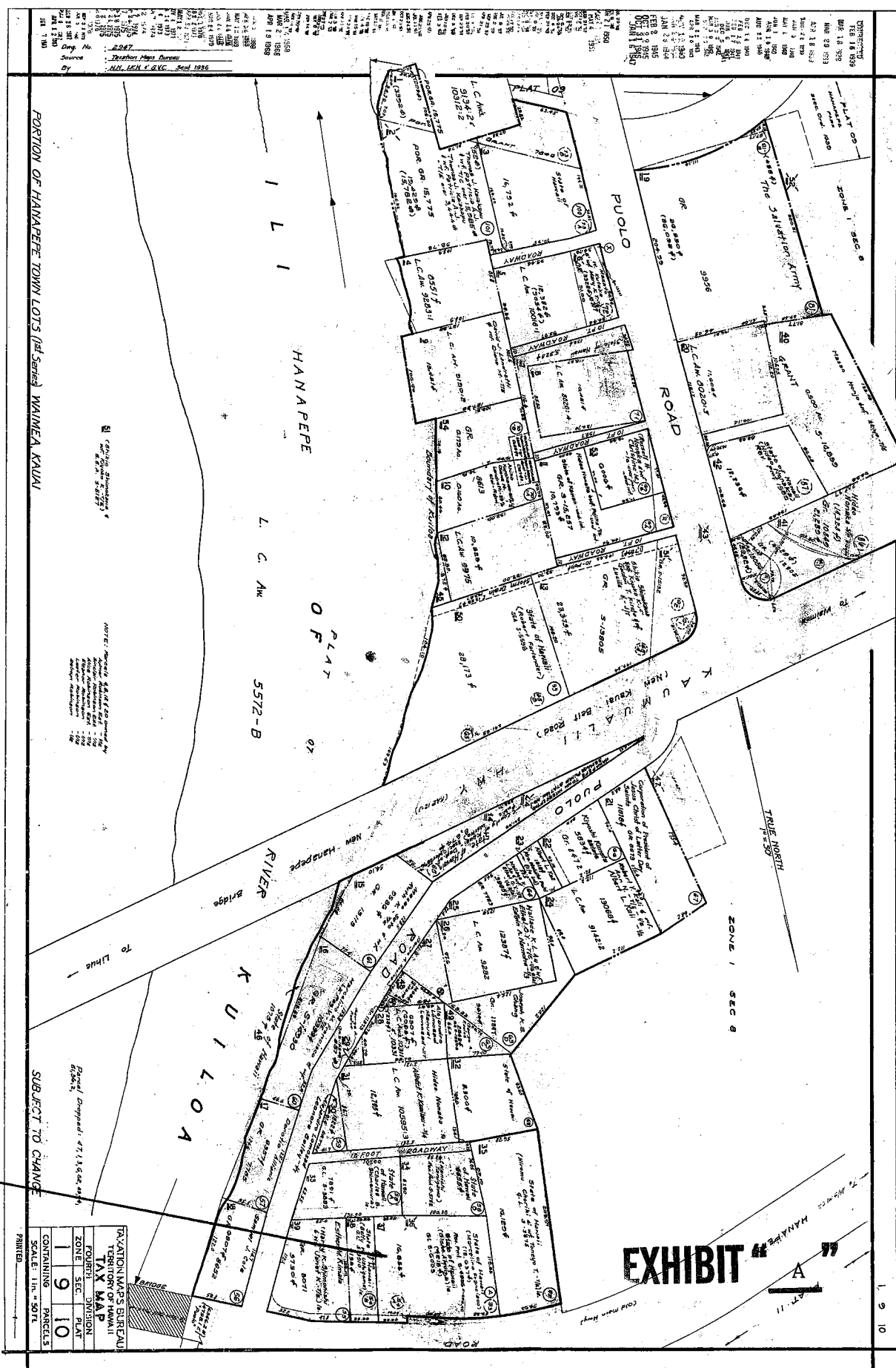
Gary Martin  
Land Agent

APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson

GL No. S-4946

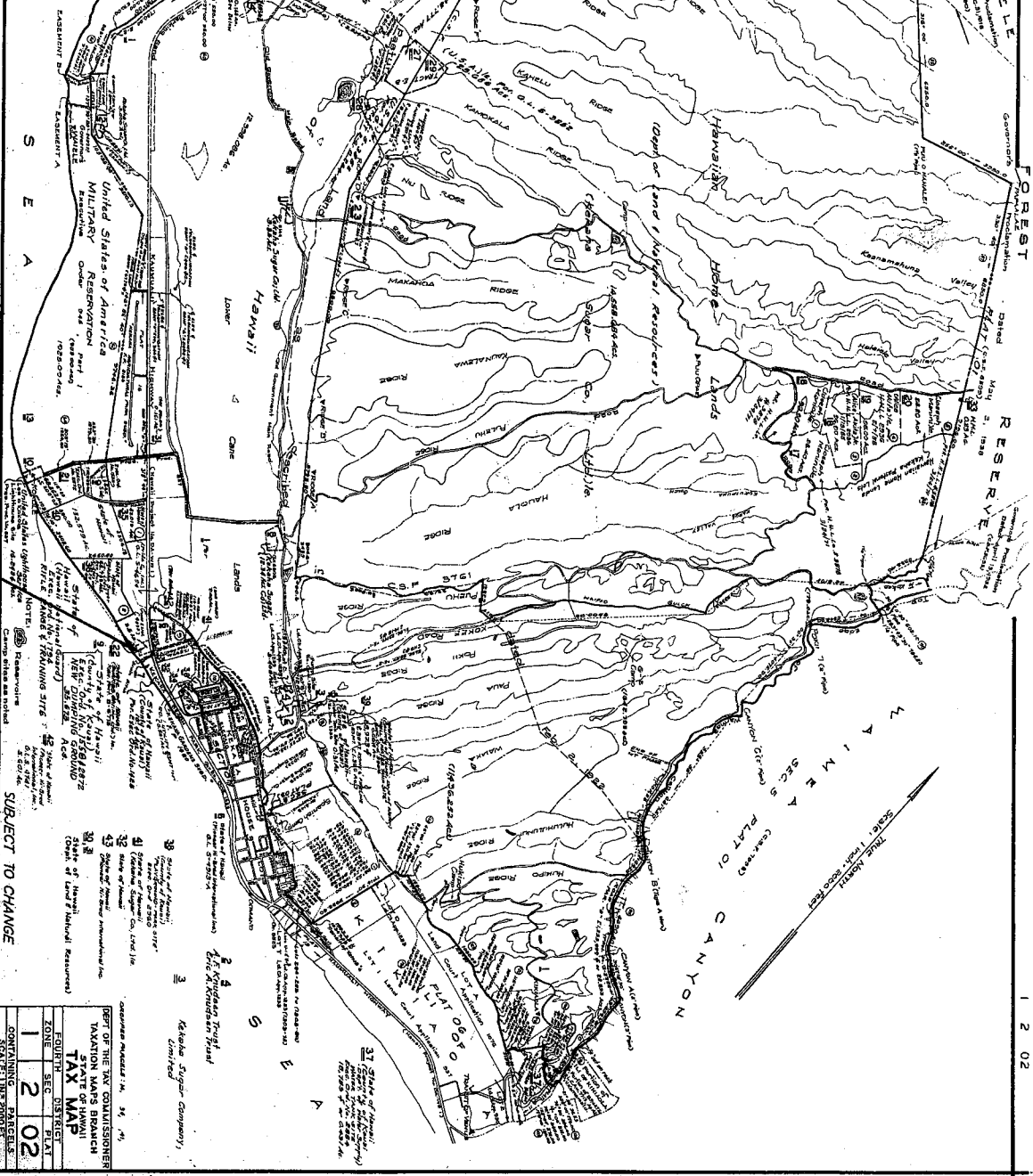


Orig. No. 6678 (Revised Nov. 1954)  
 Source: C.S.F. No. 1580 & TMD data  
 By: R.Y.T. Photo Print by Blueprint Co.

For KECOA, PALMERA, KAUAI, T.H.

**CLASSIFICATION**

Cane Lands	7880.087 Acres
Contributory Cane Lands	927.12 "
Pasture	7801.423 "
Miscellaneous and waste	11,725.251 Acres
Total Area depicted	27,933.871 Acres



SUBJECT TO CHANGE

1	2	02
GOVERNMENT	PARCELS	
1	2	02
1	2	02

GL No. S-5367

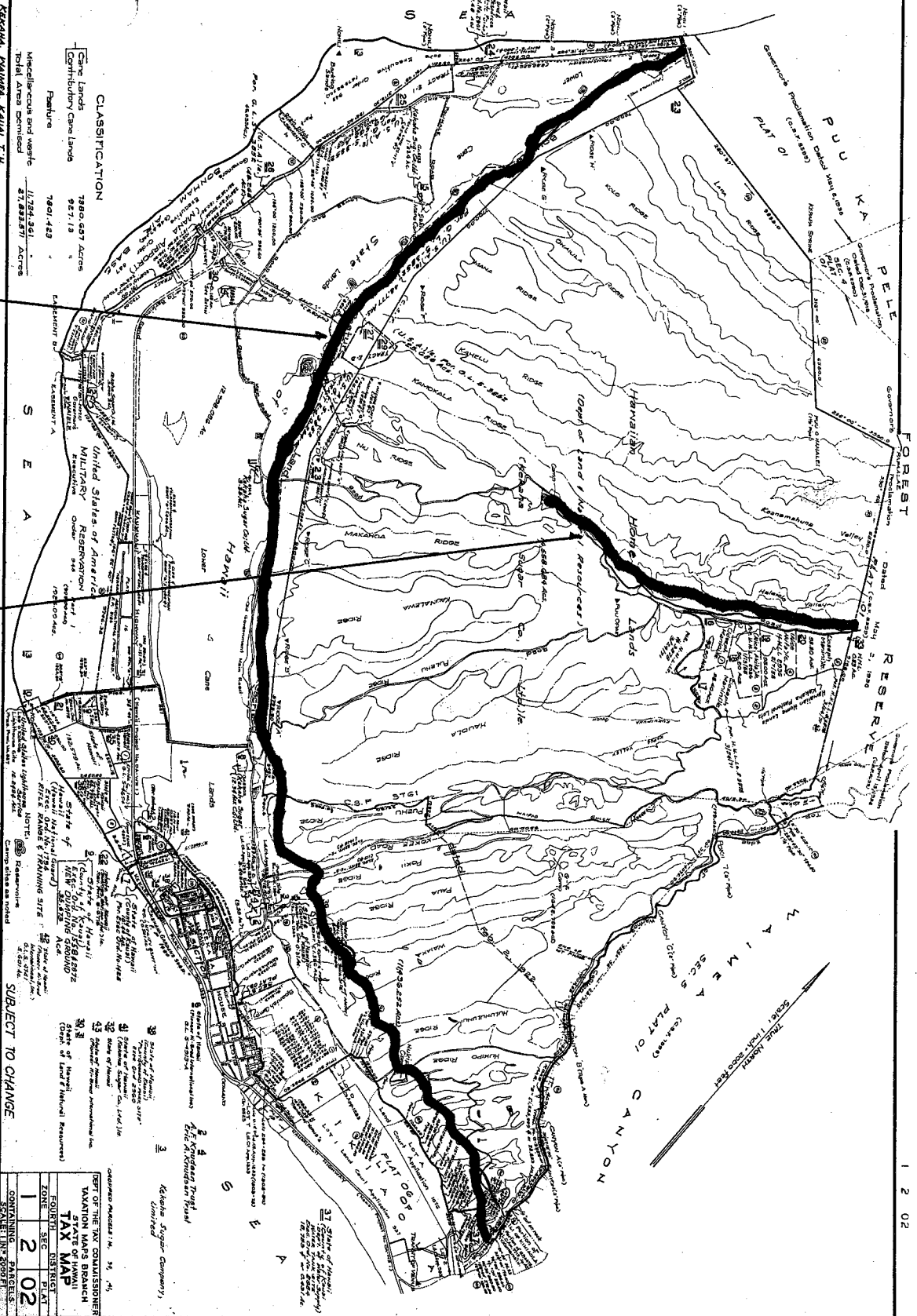


CLASSIFICATION	
Cane Lands	7880.657 Acres
Contributory Cane Lands	927.13 "
Pasture	7601.423 "
Miscellaneous and waste	11,734.361 "
Total Area Demised	<u>27,033.571 Acres</u>

[illegible]

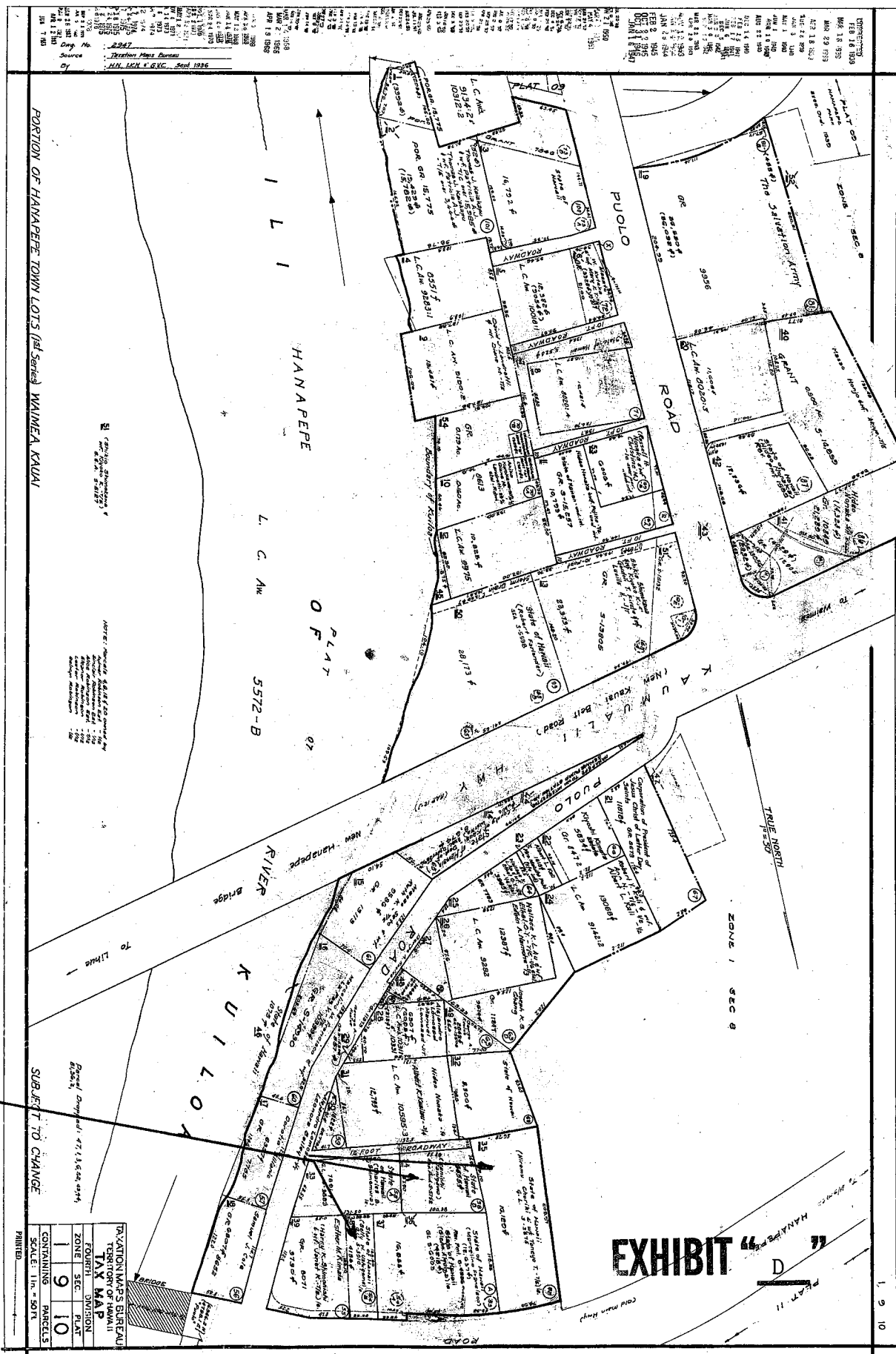
SUBJECT TO CHANGE

DEPT OF THE TAX COMMISSIONER			
TAXATION MAPS BRANCH			
STATE OF HAWAII			
TAX MAP			
FOURTH DISTRICT			
ZONE	SEC	PLAT	
1	2	02	
CONTAINING PARCELS			
SCALE 1" = 2000 FT			



Kokee Ditch

D.



PORTION OF HANAPEPE TOWN LOTS (1<sup>st</sup> Series) WAIMĒA, KAUAI

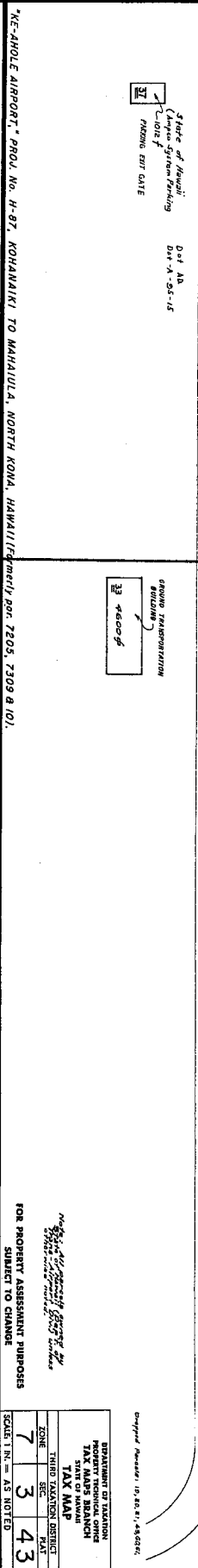
SUBJECT TO CHANGE

**PRINTED**

TAXATION MAPS BUREAU TERRITORY OF HAWAII		
TAX MAP		
FOURTH	DIVISION	
ZONE	SEC.	PLAT
1	9	10
CONTAINING		PARCELS
SCALE: 1 in. = 50 FT.		

RP No. S-7256





DEPARTMENT OF TAXATION			
PROPERTY TECHNICAL OFFICE			
TAX MAPS BRANCH			
STATE OF HAWAII			
TAX MAP			
THIRD TAXATION DISTRICT			
ZONE	SEC.	PLAT	
7	3	43	

SCALE 1 IN. = 45' NOTED